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Amendment and/or Response
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REMARKS

Claims 5, 7, 9, 10, and 12-16 are pending in this application.

The applicant respectfully requests the admittance of this amendment, to place the claims in a better condition for allowance or appeal. Claims 6 and 8 are canceled, and claim 9 is rewritten in independent form; claims 7, 10, and 13 are amended to be dependent upon claim 9. The applicant respectfully suggests that this amendment adds no new matter, and does not require an additional search.

The applicant respectfully traverses the finality of this Office action. The applicant's prior amendment did not introduce any substantive changes to the amendments relevant to the original grounds for rejection.

The Examiner's attention is requested to MPEP 706.07(a) "Final Rejection, When Proper on Second Action", wherein it is stated:

"Under present practice, second or any subsequent actions on the merits shall be final, *except* where the examiner introduces a new ground of rejection that is neither necessitated by *applicant's amendment of the claims* nor based on information submitted in an *information disclosure statement* filed during the period set forth in 37 CFR 1.97 (c)".

The applicant respectfully notes that an information disclosure statement has not been filed during the period set forth in 37 CFR 1.97, and respectfully maintain that the new ground of rejection was not necessitated by the applicant's prior amendment to the claims.

The applicant's claims, before and after the applicant's amendment, recite an appliance and a method of controlling an appliance wherein a remote device communicates an identifier, and the appliance provides this identifier to a relay server. The relay server, in turn, communicates an address of a profile server to the appliance, and the appliance accesses the profile server to determine a profile for configuring the appliance.

The prior Office action of 20 November 2004 rejected all of the claims over the applicant's admitted prior art (AAPA) and Lenz (USP 6,029,196). In the applicant's

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response, the applicant noted that neither AAPA nor Lenz taught or suggested obtaining profile information via a relay server. In response to this argument, and NOT in response to the applicant's amendment, the Examiner located additional prior art, and rejected the claims over AAPA and Apfel et al. (USP 5,974,454, hereinafter Apfel).

Because the new grounds of rejection were not necessitated by the applicant's amendment, the applicant respectfully requests the Examiner's reconsideration of the finality of this referenced Office action.

The Office action finally rejects claim 5 under 35 U.S.C. 103(a) over the applicant's admitted prior art (AAPA) and Apfel. The applicant respectfully traverses this rejection.

Claim 5 specifically claims an appliance that is configured to receive an identifier from a remote device, transmit the identifier to a relay server, receive a profile address from the relay server, and then access profile data from the profile server. Some of the advantages provided by this use of a relay server to determine where to access the profile data are provided at pages 5 through 14 of the applicant's specification. Of particular note, by providing an intermediary relay server, each appliance can be pre-programmed with the relay server location, independent of the location of the particular user's profile data, and, conversely, the user's profile can be located anywhere, independent of any particular appliance.

The Office action acknowledges that the applicant's admitted prior art (AAPA) does not teach the use of a relay server for providing access to profile data on a profile server, and relies upon Apfel for this teaching. The applicant respectfully notes, however, that there is no suggestion in either AAPA or Apfel for this combination.

The Examiner's attention is requested to MPEP 2143, wherein it is stated:

"THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION ... The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). ... The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)".

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Apfel teaches a method and system for installing and updating components of computer programs. A computer checks the current date; if the date is on or after a given registry date, the computer sends a database query request, to determine whether updates are available for a given program module. If an update is available, the database server notifies the computer of the address at which the update can be found. Of particular note, Apfel does not address an appliance that receives an identifier from a remote device and accesses profile data corresponding to this identifier by receiving the location of the profile data from a relay server. There is no suggestion in Apfel that Apfel's database server should be used for providing profile data to an appliance, and there is no suggestion in AAPA that an intermediary server should be used to provide a location of a server that provides profile data for an appliance.

The Office action asserts that it would have been obvious to one of ordinary skill in the art to combine AAPA and Apfel "because the profile isn't stored on the appliance". The applicant respectfully disagrees with this assertion because the AAPA provides a solution to the problem of a profile not being stored on the appliance, and the AAPA's solution does not include the use of a relay server. Thus, because the AAPA provides a viable solution to the profile not being stored on the appliance, one of ordinary skill in the art would not be lead to search for an alternative solution, and would not be lead to the applicant's particular solution of using a relay server in lieu of a direct connection to the profile server as taught by the AAPA.

Because neither AAPA nor Apfel teaches or suggests the use of a relay server for providing access to profile data on a profile server, and because neither AAPA nor Apfel suggests a combination of these references, the applicant respectfully requests the Examiner's reconsideration of the rejection of claim 5 under 35 U.S.C. 103(a) over the applicant's admitted prior art and Apfel.

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The Office action does not explicitly state that the remaining claims are also rejected under 35 U.S.C. 103(a) over the applicant's admitted prior art and Apfel. However, claims 6-10 and 12-16 are addressed after the explicit rejection of claim 5 under 35 U.S.C. 103(a) over the applicant's admitted prior art and Apfel. Therefore, the applicant assumes that rejection of claim 5 was intended to read claims 5-10 and 12-16.

Claim 9, upon which claims 7, 10, 12, and 13 depend, claims a method of controlling an appliance that includes receiving profile data via access to a network based on relay data received from a network server.

Claim 14, upon which claims 15-16 depend, claims a method of controlling an appliance that includes controlling the appliance based on a profile that is received from a profile server whose address is provided by a relay server.

As noted above, neither AAPA nor Apfel teaches or suggests the use of a relay server for providing access to profile data on a profile server, and neither AAPA nor Apfel suggests a combination of these references. Therefore, the applicant respectfully maintains that claims 7, 9, 10, and 12-16 are patentable under 35 U.S.C. 103(a) over the applicant's admitted prior art and Apfel.

In view of the foregoing, the applicant respectfully requests that the Examiner withdraw the rejections of record, allow all the pending claims, and find the present application to be in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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